

SARKEYS, INC.

IBLA 70-660

Decided November 27, 1970

Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Rentals --  
Oil and Gas Leases: Terminations

Where an oil and gas lease is considered to have been terminated pursuant to 30 U.S.C. § 188(b) and the rental payment to preclude such termination had been timely submitted to the land office but inadvertently applied to another lease account, and then refunded to the payor when the lease to which payment had been attributed was relinquished, who accepted the refund without question, it is correct to hold that the lessee's rights in the terminated lease have been extinguished, and that a new oil and gas lease, duly issued for such lands and thereafter assigned to a bona fide purchaser, is valid.

IBLA 70-660

: NM 3298 (Okla)  
NM 8262 (Okla)

SARKEYS, INC.  
L. O. WARD

: Land office decision  
vacated; noncompetitive  
oil and gas lease  
cancelled

: Affirmed

### DECISION

Sarkeys, Inc., has appealed to the Director, Bureau of Land Management, 1/ from a decision dated March 13, 1970, in which the Bureau's State Director for New Mexico cancelled noncompetitive oil and gas lease NM 3298 (Okla), and vacated the New Mexico land office decision of March 4, 1970, which had purported to cancel oil and gas lease NM 8262 (Okla), and to reinstate lease NM 3298 (Okla).

Sarkeys contends that the decision of March 4 was correct and that the State Director's decision of March 13 is in error, as Sarkeys had tendered rental payments each year for the land included in lease NM 3298 (Okla), but the land office had incorrectly applied these rental payments to other lease accounts.

L. O. Ward, lessee of lease NM 8262 (Okla), following approval of an assignment of record title, has submitted a brief contending that he is entitled to protection as a bona fide purchaser of the lease, no matter who made the error which resulted in termination of the antecedent lease NM 3298 (Okla).

The facts surrounding this case are not in controversy, but as they are somewhat complicated, we set them forth in some detail. On September 1, 1968, Sarkeys held record title, after

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1/ The Secretary of the Interior in the exercise of his supervisory authority transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Circular 2273, 35 F.R. 10009, 10012.

approval of assignments, to lease NM 520 (Okla), embracing SW1/4 NW1/4, NW1/4SW1/4 section 1, T. 6 N., R. 26 W., I.M., Oklahoma, containing 80 acres, which had been issued effective October 1, 1966, and to lease NM 3298 (Okla), embracing W1/2SE1/4 section 23, T. 23 N., R. 16 W., I.M., Oklahoma, containing 80 acres, which had been issued effective October 1, 1967. On September 20, 1968, Sarkeys tendered to the New Mexico land office its check No. 851 for \$ 40, indicating that it was in payment for rental from October 1, 1968, for the W1/2SE1/4 section 23, T. 23 N., R. 16 W., I.M., but the check contained no reference to the serial number of the affected lease. The land office inadvertently applied this rental payment to the account for lease NM 520 (Okla), for the lease year commencing October 1, 1968. On September 27, 1968, Sarkeys filed a relinquishment of lease NM 520 (Okla), so the land office directed repayment of the prepaid rental of \$ 40 received September 20, 1968. Sarkeys accepted, without apparent question, the U.S. Treasury check for \$ 40, which indicated on its face that it was for "Repayment BLM NM 520 Okla O&G."

Meanwhile, as the lease account for NM 3298 (Okla) did not show payment of rental for the lease year commencing October 1, 1968, the land office considered this lease to have terminated by operation of law pursuant to 30 U.S.C. § 188 (b) (1964), and so listed the land involved in the notice of lands available for the October 1968 simultaneous filing procedure. After drawing to determine priority, the drawing entry card lease offer of Mrs. Jill G. Thomas was accepted and lease NM 8262 (Okla) was issued effective December 1, 1968, for the said W1/2SE1/4 section 23 T. 23 N., R. 16 W.

On September 22, 1969, Sarkeys tendered payment of \$ 40 by its check No. 1193, with indication that it was payment for rental on the W1/2SE1/4 section 23, T. 23 N., R. 16 W., I.M. Further adding confusion, someone had noted on the Sarkeys check that the BLM lease identification was "NM 520." As there was no existing lease "NM 520," the land office applied the rental payment to the lease for the described land, namely, NM 8262 (Okla), and transmitted receipt for the payment to Mrs. Jill G. Thomas, the lessee of record, showing payment in advance for the lease commencing December 1, 1969. However, the land office decision of September 26, 1969, notified Mrs. Thomas that lease NM 8262 (Okla) had been determined to be within the known geologic structure, undefined, of a producing

oil or gas field effective August 14, 1969, so the rental rate for the lease was increased to \$ 2 an acre commencing with the lease year beginning December 1, 1969.

Assignment of record title to lease NM 8262 (Okla) to L. O. Ward was approved effective December 1, 1969. Concurrent with the assignment to Ward, Mrs. Thomas notified the land office that the payment of \$ 40 by Sarkeys was erroneously applied to the account for NM 8262 (Okla), and submitted her own payment of \$ 160, to satisfy the increased rental charge caused by the KGS determination. At that time, the land office directed refund of the \$ 40 payment to Sarkeys, with the U.S. Treasury check being identified as "Repayment BLM NM 8262 O&G." Sarkeys also accepted this refund with no question.

In February 1970, the land office was made aware that both Sarkeys and Ward claimed title to the Federal oil and gas lease on the W1/2SE1/4 section 23, T. 23 N., R. 16 W., I.M.

In its decision of March 4, 1970, the land office stated that as rental had been timely tendered for lease NM 3298 (Okla), although the payment was inadvertently credited to lease NM 520 (Okla), termination of lease NM 3298 (Okla) by operation of law was incorrect, so the decision purported to reinstate lease NM 3298 (Okla), and to cancel lease NM 8262 (Okla) as being improperly issued.

Before the aggrieved party responded, the State Director issued his decision of March 13, 1970, vacating the land office decision of March 4, and reinstating lease NM 8262 (Okla). The State Director held that Sarkeys had not acted with due diligence in payment of the rental due on October 1, 1968, (the payment received in the land office on September 20, 1968), because Sarkeys gave only the land description with its check, and failed to identify the serial number of the lease involved. Although the land office erroneously applied this rental payment to lease NM 520 (Okla) instead of lease NM 3298 (Okla), after Sarkeys had relinquished lease NM 520 (Okla), it accepted repayment of \$ 40, without asking any questions. And again in 1969, after Sarkeys tendered its check for \$ 40 for the said W1/2SE1/4 section 23, T. 23 N., R. 16 W., and repayment of \$ 40 subsequently was made under the identification of "NM 8262", Sarkeys accepted this repayment without question. So the State Director held that lease NM 3298 (Okla) was

correctly terminated by operation of law for failure to pay rental timely, and that lease NM 8262 (Okla) was a valid lease, having been issued properly.

The State Director's decision cites Shell Oil Company, LC 062929-C (September 30, 1960), as precedential in overlooking the land office mistake in applying the first Sarkeys check to the wrong lease account. The decision cited is not applicable to this situation as it related to payment of a rental with which the wrong serial number was given, even though the payment referred correctly to the land for which the rental was intended. The Shell decision held that the land office correctly applied the rental money to the serial number given, and it was not obliged to verify that the described land was included in that lease. In this case, the check named no serial number for the lease but gave only the land description, which, if it had been checked by the land office, would have identified the rental payment as being for lease NM 3298 (Okla), and not for lease NM 520 (Okla). It should be noted that the billing notices sent by the land office to Sarkeys in advance of the remission of the rentals on the line beneath that indicating the amount to be paid, the following instruction is printed in large type, "RETURN THIS BILL WITH YOUR REMITTANCE OR SHOW SERIAL NUMBER ON REMITTANCE." The ensuing confusion might well have been avoided altogether had appellant not disregarded this instruction. Nevertheless, we cannot hold that the rental check having the correct land description of the area leased under lease NM 3298 (Okla) was improper, incomplete, or unacceptable for the purpose indicated, or that the land office was without fault in applying the 1968 rental payment for lease NM 3298 (Okla) to lease NM 520 (Okla).

This does not mean that Sarkeys is now entitled to reinstatement of lease NM 3298 (Okla). The land was duly posted to a list of lands available for leasing under the simultaneous filing procedure. Pursuant to a lease offer which gained priority by drawing, a new oil and gas lease NM 8262 (Okla) was issued, and in point of time, issued after Sarkeys had accepted repayment of the \$ 40 tendered for payment of rental for the lease year commencing October 1, 1968, for lease NM 3298 (Okla), albeit the refund check indicated it was repayment for lease NM 520 (Okla). As Sarkeys had not made any payment in connection with lease NM 520 (Okla), it should have ascertained the reason for the repayment. It was incumbent upon Sarkeys to inquire of

the purpose for which the repayment was made or suffer the consequences of the land office error which prompted the repayment. The cases cited by the State Director, Duncan Miller, A-27683 (November 10, 1958), and Gwen Gaukel, A-29017 (December 14, 1962), are not strictly in point as each related to a refund check correctly identified as to serial number of the case for which the repayment was being made. While it must be conceded that neither repayment to Sarkeys indicated the serial number of the lease that Sarkeys thought it was paying rental for, each having carried the number erroneously chosen by the land office, it must also be noted that Sarkeys did not question the propriety of either repayment, something it surely would have done in the exercise of due diligence.

When Sarkeys attempted to pay the rental it assumed was due on October 1, 1969, for the W1/2SE1/4 section 23, T. 23 N., R. 16 W., it again gave the land description on the check rather than any serial number, although the identification "NM 520" apparently was added to the voucher after the check had been prepared. The addendum was typed on a different machine from that used in the preparation of the original check for the 1969 rental, but the type face bears a close resemblance to that exposed on the Sarkeys 1968 check. When the land office received the 1969 check from Sarkeys, and found that the lease account under "NM 520" had been closed when the lease NM 520 (Okla) was relinquished in September 1968, the land description on the voucher was checked against the land status records in the land office. It was ascertained that lease NM 8262 (Okla) was the existing lease, so the payment of \$ 40 was applied to that lease account, with receipt for the payment going to the lessee of record, Mrs. Jill G. Thomas. Sarkeys did not inquire as to disposition of its payment when it did not receive a receipt, nor did it inquire after the subsequent repayment of the \$ 40, following payment of the correct amount of rental due for lease NM 8262 (Okla) by the lessee of record.

This case is easily distinguished from H. E. Stuckenhoff, Clyde A. Breen, 67 I.D. 285 (1960). In that case rental checks were erroneously returned by the land office to Messrs. Stuckenhoff and Breen, whereupon Breen wrote a letter of inquiry to the land office on the same day he received his check, and Stuckenhoff immediately filed an appeal after his check was returned. Moreover, that case involved no problems of identification.

Although within a reasonable time after October 1, 1968, a case might have been made that the lease NM 8262 (Okla) had been improperly issued and was subject to cancellation, because of the land office error in applying rental money intended for lease NM 3298 (Okla) and subsequent termination of that lease under 30 U.S.C. § 188(b), supra, the passage of time without any inquiry by Sarkeys concerning the refunds which it accepted has tended to eliminate effectively the rights of Sarkeys under lease NM 3298 (Okla). With the approval of an assignment of the record title to the successor lease NM 8262 (Okla), from Mrs. Jill G. Thomas to L. O. Ward, effective December 1, 1969, any action to cancel lease NM 8262 (Okla) now for violation of any provision of the Mineral Leasing Act could be taken only within the ambit of 30 U.S.C. § 184(h)(2) (1964), which affords protection against cancellation of leases of bona fide purchasers of such oil and gas leases. Southwestern Petroleum Corp. 71 I.D. 206 (1964), aff'd. Southwestern Petroleum Corp. v. Stewart L. Udall, 361 F. 2d 650 (10th Cir. 1966). While it is regrettable that errors were made in connection with lease NM 3298 (Okla), there is no remedy available to Sarkeys to obtain reinstatement of this lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the State Director is affirmed.

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Edward W. Stuebing, Member

I concur:

I concur:

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Francis Mayhue, Member

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Martin Ritvo, Member

